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Are Gordon Campbell’s robes tainted?

The appointment of Gordon Campbell to the PEI Supreme Court is a mockery to the judicial system he now serves.

The Charlottetown lawyer, who boasts impeccable Liberal pedigree, was appointed to the prestigious position last week by the federal Liberal government. But before he hears even one case, Justice Campbell’s robes are tainted.

The question that must be asked is: Does Campbell’s past actions render him unfit for the job?

Doesn’t the law say that the appointment of a Supreme Court justice should be based on merit and not on political considerations? Shouldn’t the appointment be based on the candidate’s qualifications and the criteria established for the position?

In a strongly worded 7-0 decision, the Supreme Court ruled that the government of Quebec had the right to fire a judge for lying on his judicial application. As a young law student, Judge Richard Therrien was convicted of helping to hide four FLQ supporters. He served one year in prison and in 1985 received a pardon, effectively wiping the conviction from his record.

He applied for a judicial appointment on five occasions. Initially he admitted the conviction when asked: “Have you been in trouble with the law?” All were rejected. On a subsequent application he made no mention of either the conviction or the pardon. His application was accepted and he was appointed a judge.

The Supreme Court ruled the Quebec government had the right to fire Therrien for not including his conviction and pardon information on his successful application.

To be fair to Gordon Campbell, we don’t know how he answered the “Have you been in trouble with the law?” type question. A request of both him and the federal justice department to release his judicial application has gone unanswered.

The Supreme Court, however, went further than simply deciding whether the Quebec government has the right to fire a judge. The court spoke strongly about the need for judges to conduct themselves in a “virtually unapproachable” manner — including before accepting a judgeship.

“What is demanded of the judge is something far above what is demanded of their own fellow citizens,” Justice Gonthier wrote in his decision. “The judge is in ‘a place apart’ in our society and must conform to the demands of this exceptional status. The public will therefore demand virtually unapproachable conduct from anyone performing a judicial function.”

He went on to add: “...Judges also play a fundamental role in the eyes of the external observer of the judicial system. The judge is the pillar of our entire justice system, and the rights and freedoms which that system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our democracy are built, but they are asked to embody them.”

How is this relevant to Gordon Campbell? Well remember his history.

Gordon Campbell is a Liberal operative, past president of the PEI Liberal Party, legal defender of the Prime Minister in the pie-throwing incident of last summer and the primary beneficiary of a highly criticized court ruling.

In 1993 Gordon Campbell was the subject of a CBC story that alleged he used his connections within the then Liberal government to obtain work for a woman who had previously worked at his law firm. She was given a provincial government job even though the government was cutting back, not hiring at the time.

When the story aired, Campbell was enraged. He went to the CBC studio and punched producer Geoff Hussey in the face. He was charged and pleaded guilty to assault.

Justice Gerald Fitzgerald, who heard the case, granted Campbell an absolute discharge — meaning Campbell’s record would not be blotted by the assault.

He continued his legal career with minimal interruption.

The ruling outraged many Islanders who perceived it as proof that there are two tiers of justice on PEI — one for those with connections and one for everyone else. In the year following the Campbell ruling, Island judges did not grant any absolute discharges for assault convictions.

Given the benefit of hindsight, it can be argued the absolute discharge was a good ruling. There have been no other incidents. Campbell’s been an active and energetic member of the community, including in many non-political activities. That still does not make him worthy of a seat on the PEI Supreme Court, Trial Division.

Islanders still recognize him as the “lawyer who slapped the guy at CBC.”

The bottom line legacy of Campbell’s punch is he received a sentence few Islanders receive. Now he’s in the position of having to render punishment.

What will Campbell do when similar assault cases appear before him? Will he throw the book or will he offer the same type of soft-lining sentencing that he himself received. Either way virtually any assault related decision of Justice Gordon Campbell is open for valid, public criticism.

That’s not what Islanders demand of Supreme Court judges. Nor is it what members of Canada’s Supreme Court contend should be the image of members of the judiciary. In its written decision the Supreme Court wrote past criminal convictions might be relevant because of the unique position in society held by judges.

Wrote Justice Gonthier: “The personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it.”

Given Gordon Campbell’s history, it’s impossible for him to meet those high expectations.
An explanation from the winner

The genesis of this column started about a week before Gordon Campbell's judicial appointment when a brief report on the Supreme Court of Canada's Therrien decision appeared in our provincial daily paper.

I took little notice of the decision until days later when Campbell was appointed to the PEI Supreme Court. To my amazement Island media made no mention of Campbell's own run-in with the law eight years before.

I was outraged the media failed to mention that our newest justice had received an almost unheard of absolute discharge for assault. Campbell's appointment demanded comment. That is when I remembered the Therrien ruling, which transformed my column from a rant to something more substantive.

Thanks to the Internet I obtained a copy of the 47-page ruling and was amazed at the strength language the Supreme Court of Canada used to describe its vision of judicial integrity. While the ruling did not deal directly with Campbell's appointment, the parallels were significant.

All attempts to interview Campbell or federal officials involved in his appointment were rebuffed. The first column was published. While friends within the legal community tell me it caused a minor furor, it had no impact on Island media. When Campbell was officially sworn in, a second round of positive stories were aired and published that again failed to make any reference to either Therrien or Campbell's well-documented previous legal problems.

I was determined to write another column and proceeded to contact as many of the players involved as possible. I called officials in Ottawa. I contacted members of the local committee that vetted Campbell's application. I called the provincial Attorney General and several justices including the Chief Justice of the PEI Supreme Court.

When calls weren't returned, I phoned again. Those who did take my calls referred me elsewhere. Others simply refused to talk to me. However, I believe I made myself a big enough pest that Gordon Campbell was forced by his peers to deal with the issues I was raising.

On the Friday before publication I was driving 30 miles to Charlottetown for a meeting when my cell phone — which is rarely turned on — rang. "Mr MacNeill, Justice Campbell is mailing a letter to you this afternoon," the secretary said. "Can he fax it. I don't want to rely on Canada Post," I said.

I cancelled my meeting and headed back to the office. Waiting for me was the letter from Justice Gordon Campbell. It included a portion of his private application for the judiciary showing he did disclose his previous brush with the law. I was stunned, not because he disclosed his background, but because he voluntarily released that information to me.

Immediately I knew I could no longer write what I had first anticipated — a piece highly critical of the silent acceptance of Campbell's appointment. With one simple disclosure Gordon Campbell had gone a long way toward meeting the spirit of the Therrien decision. That disclosure deserved to be recognized. The second column was published.

As a result our readers received information available nowhere else and Justice Campbell removed a question mark from his appointment. Not a bad result, eh!